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# HENRY WHEATON

## AN APPRECIATION

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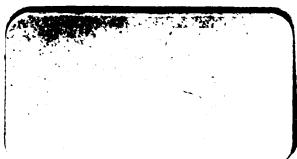


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FROM

The Author.

William Vail Kellen.



WITH THE COMPLIMENTS OF W. V. KELLEN

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W. V. KELLEN,  
202 COMMONWEALTH AVENUE,  
BOSTON.

April 3, 1903

Dear Sir:

I take pleasure in  
sending you a copy of  
"Henry Wheaton, An Appreciation" =

Very truly Yours

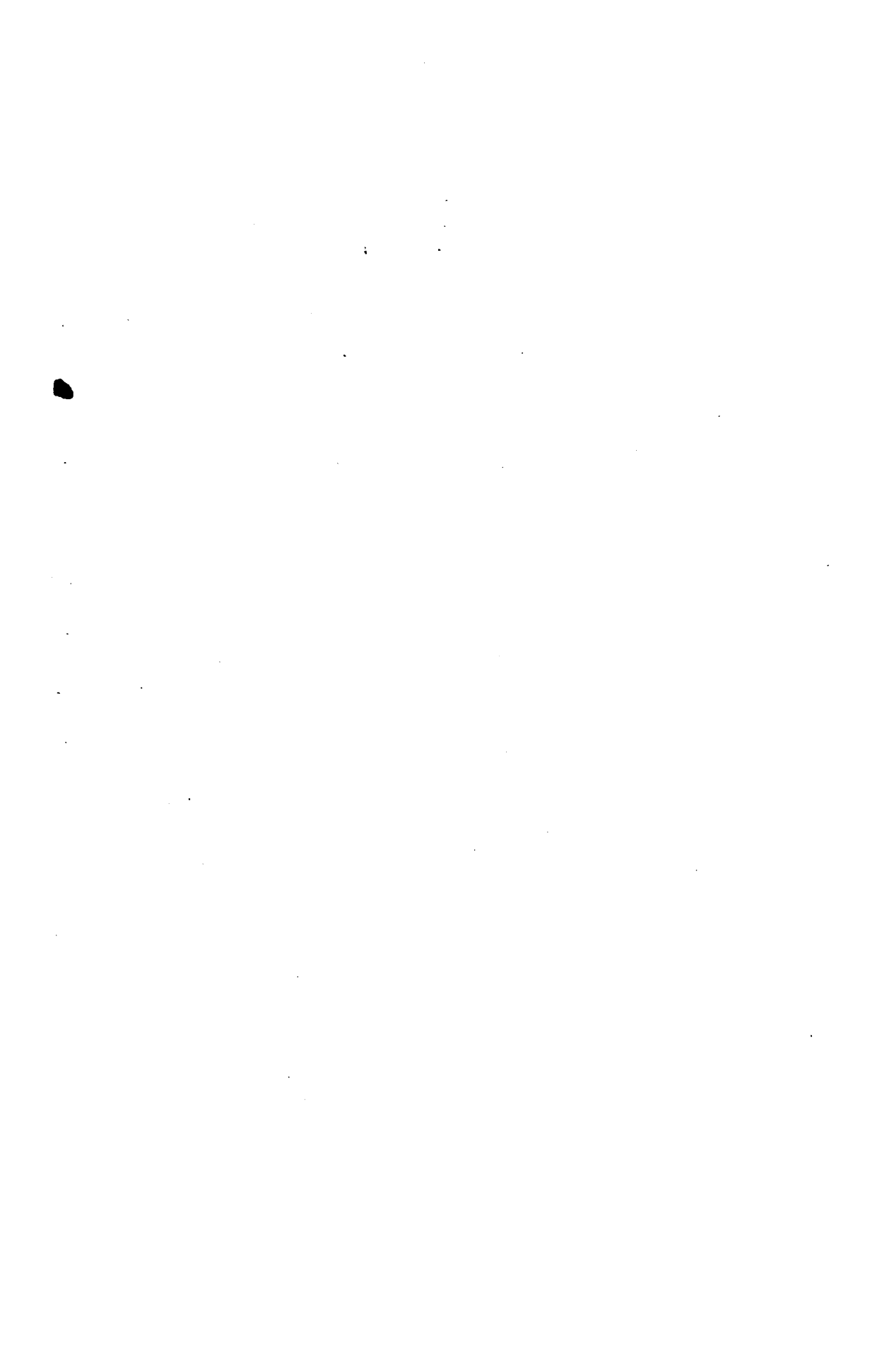
Mr William C. Lane

W. V. Kellen

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**HENRY WHEATON**









HENRY WHEATON, LL.D.

*Brown University. 1802.*



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**HENRY WHEATON**

**AN APPRECIATION**

**BEING THE ADDRESS DELIVERED BEFORE THE  
ALUMNI OF BROWN UNIVERSITY ON THE OCCA-  
SION OF THE ONE HUNDREDTH ANNIVERSARY OF  
HIS GRADUATION, JUNE SEVENTEEN, MDCCCCH**

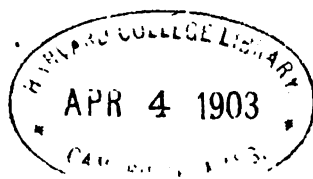
**BY WILLIAM VAIL KELLEN, PH. D.**

**BOSTON**

**PRINTED AT THE MERRYMOUNT PRESS**

**MDCCCCH**

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*The Author*

*D. B. Updike, The Merrymount Press, Boston*

## HENRY WHEATON

*Mr. President, Fellow Alumni of Brown University,  
Ladies and Gentlemen:*

ONE hundred years ago next September, when Commencement meant the commencement, and not, as now it means, the end of the Academic year, Henry Wheaton was graduated from Brown University.

It is to render honor to the life, character, and world-service of this great son of "Brown" and of Rhode Island that we are gathered here to-day. Perhaps, taking into account the extent, the variety, and the value of his life-work, and the size of the stage on which he acted worthily his part, he may be called the greatest son of his Alma Mater, as he certainly was the greatest son of this Commonwealth. As was said by one of the eulogists of Chief Justice Marshall,—“The very greatness and completeness of his work prevent our appreciating how great he was.” It is eminently fit and proper that the State of his birth, the city of his early residence, the Courts before which he essayed to practise and the Bar of which he was an early member, should unite with the College in the celebration of this notable anniversary.

The “little compass of an hour,” conventionally allotted to celebrations such as this, irrespective of the importance of the occasion, limits me to outlin-

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ing in a few bold strokes the life, the attainments, and the accomplishments of this eminent man,—portraying his youth and his manhood by allusion to salient traits and to unusual experiences only, and describing his noble and peerless work by the briefest generalization.

If the sketch lacks coherence and form, ascribe this unfortunate result, I pray you, to the speaker's want of skill, and not to any lack of precision in mental quality or of beauty in moral contour on the part of this ideally useful and symmetrical but, alas, all too brief life.

Wheaton has paid the penalty visited too often upon those who have done mighty work secluded from the public gaze, or who have served their country, however faithfully, abroad; for I do not find that the name, fame, and exceptional qualities of this great man have been held up in oral discourse as a conspicuous example of the ideally gifted, loyal, and useful citizen, to the proud contemplation of appreciative age or for the encouragement of ambitious and ingenuous youth, either in his native State or without its borders, in the more than fifty years that have elapsed since his untimely death, except for a little contemporaneous comment and an address delivered at a single meeting of the Bar Association of his adopted State. Such neglect of itself would justify the devotion of this day and hour to such a theme, if any excuse were needed beyond the fact that this festival-time corresponds to the cen-

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tenary of his graduation from this Venerable Institution.

Henry Wheaton was born in Providence, Rhode Island, on November 27, 1785.

The Wheatons were of Welsh descent, and the emigrant, Robert, settled successively in Salem, Rehoboth, and Swansea across the line in Massachusetts, and there plied his trade as a tanner. Subsequently his descendants migrated to Providence, where Seth Wheaton, the father of Henry Wheaton, described as "a man of strong and determined character and of great natural sagacity," became a successful merchant, and later, upon retiring with a competence, the President of the Rhode Island Branch of the United States Bank—a position that stamped him as a leader in this community. Wheaton's mother, as notable for an "extreme purity of character" as for "sweetness of temper," was a woman of native common sense, a strong intellect, and of rare refinement. Wheaton would seem to have been indebted to both parents in about an equal degree for his vigorous intellect and practical sense, but to his mother chiefly for the finer qualities and tastes which he possessed in so notable a degree.

Wheaton however owed much of his early zest for knowledge to Dr. Levi P. Wheaton, his maternal uncle and future father-in-law, who, besides exerting a potent influence on Wheaton's whole life, was an uncommon man, meriting, though time is so precious, more than a passing notice. Dr. Wheaton



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entered Rhode Island College—the first attempt at naming this Institution—in 1774, when Dr. Manning, its founder, and Professor Howell constituted the Faculty, and, with the sole assistance of a member of the Junior class, formed its whole teaching staff. Dr. Wheaton left college in 1778, served in a military hospital in Providence, was afterwards a surgeon upon an armed privateer, and, taken a British prisoner, was put in charge of a prison-ship at New York, where he rendered good offices to his ill-fated fellow-prisoners. Peace came, and late in 1782 Dr. Wheaton received his degree, lived in New York for a while, but finally settled in Providence, where he practised medicine for upwards of fifty years. Of strong and varied parts, a masterful man, he would have become, if he had devoted himself to politics, in which he was greatly interested, a person of great mark and influence. This extract from a letter written by Wheaton to his uncle on August 10, 1845, gives a glimpse of the influence exerted by the elder over the younger during his formative years:

“I went a few days since to Potsdam to see the first performance of ‘Medea’—the tragedy of Euripides translated into German. . . . I thought of you as I was sitting there and wished you could have been with me, as it would, I am sure, have given you great pleasure to see the Greek tragedy revived,—we used to enjoy Sophocles so much in reading him together.”

Dr. Wheaton, surviving his nephew, lived to be ninety and retained his faculties unimpaired to that

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great age, reading for seven or eight hours a day all the new books as they issued from the press and criticising them in his note-book as he read. In the last entry he commented on a passage condemning our then more general national habit of chewing tobacco: "As an instance," says his memorialist, "of the manner in which Dr. Wheaton endeavored to profit, even at his advanced age, by any useful advice, we would mention that he himself renounced this habit, in which he had freely indulged for many years, in consequence of reading this passage." His memorialist does not seem to connect this belated reformation, however, with the further fact that eight days later the old doctor died.

An intimacy, not usual perhaps between an uncle and a nephew and due rather to allied tastes and mutual respect than to the dual relationship, lasted throughout their mutual life. How much the younger felt indebted to the elder is revealed in a passage from a letter written by Wheaton to his uncle on May 10, 1848, when the latter was in his eighty-third year, and the former was at the height of his reputation: "I am always glad to see your handwriting, so fair and firm, and hope you will not consider it as the discharge of a debt. I am your debtor in all things, owing you more of what I am than to all others; besides the double ties of blood and connection by which we are bound together,— I will say no more, as I know you will understand me and reciprocate all my feelings in their fullest extent."

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Young Wheaton fitted for college at the University Grammar School, out of which this Institution had sprung, and entered Rhode Island College in 1798, at the age of thirteen. Here began that wonderful, gradual preparation for public service which ceased only with his untimely death. No man who ever lived discovered earlier the promptings of his inner self, trained to a finer degree every God-given talent, and worked out more completely the simple and inevitable law of his being than did Henry Wheaton. In college he was devoted to the Classics, paid attention to Mathematics and to the Sciences as will presently appear, but his particular aptitudes were for general literature and especially for historical investigation—aptitudes developed and increased by every subsequent year of his life.

Fortunately we have the record of an eye-witness of how this youth spent his time in college, which bears all the earmarks of a veracious narrative, and I venture to quote it quite fully. Listen to the quaint testimony given in 1848 by John Whipple, his classmate and chum:

“Mr. Wheaton and myself entered the Grammar School in Brown University under the tuition of the late Benjamin Allen, then a tutor or professor, in the autumn of 1796. We were of the same class and pursued the same studies until September, 1798, when we entered college. During the greater part of the four years of our collegiate course Mr. Wheaton and myself were chums, pursuing our studies in the

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same room by day and occupying the same bed by night. . . . During his whole life we were not only friends in the ordinary acceptation of the word, but confidential friends. I doubt if there was an event of the slightest importance in the early life of Mr. Wheaton that he did not disclose to me. I had the same unlimited confidence in him. . . .

“I never saw or heard of the slightest stain upon his moral purity;—truthfulness and temperance, united to an ardent thirst for knowledge, were not only the prominent but the controlling elements of his character. He possessed an amiable temper which was often subjected to pretty severe trials by interruption to his studies from the more frolicsome habits of his chum. Yet I never heard from him an angry word, nor, that I can recollect, even a mild rebuke.

“It is frequently the case that in boys brought together from different parts of the country, under the influence of different habits and sometimes of opposite tempers, personal feelings of rivalry or hostility are generated, extending at times to bitter personal abuse. Young Wheaton was never a party to such juvenile complaints. He kept himself aloof from them, partly by his amiable temper and partly by his intense love of historical pursuits. He might have had some jealous rival, but so far as my recollection informs me, I never heard a complaint against his temper, his disposition, or his conduct during his whole collegiate life. I am confirmed in these par-

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ticulars by Mr. Richard Waterman of this city, also a classmate of Mr. Wheaton's, for two years at school and four years in college.

"His intellectual habits were formed at a very early period and differed in a marked degree from those of every other member of his class. The ambition of most young men of that period was to excel in classic studies. To be able to construe and parse Virgil, Cicero, Horace, and a little of the Greek Testament seemed to be the main object of most of the college students of that period. Not so with young Wheaton. Though he did not positively neglect these tasks, yet his intense passion for historical and general knowledge seemed to absorb all the other objects and purposes of life. It manifested itself at an early period of his collegiate course. The past and present condition of the different nations of ancient and modern times, or, in other words, History and Politics, occupied much the larger portion of his mind during a part of his collegiate and the whole of his professional studies. Herodotus, Thucydides, and Xenophon, the Roman and most of the modern historians, were read and re-read with the same intense interest that ordinary readers bestow upon the historic novels of Scott and Cooper.

"France and her history, the people of France and their struggles for republican freedom, were subjects which he so frequently discussed while in college that he was usually called 'citizen' Wheaton. For the same reason that while in college he devoted

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but a small portion of his mind to the technicalities of language, while a student at law he devoted but little of his time to special pleading. I doubt if at any period of his life he could accurately state the difference between a Plea in Abatement and a Special Demurrer. He had too deep a keel for narrow rivers and shallow creeks. He instinctively launched out upon the great ocean of thought," and to that early habit of mind is the world indebted for his learned and profound treatise upon the Law of Nations.

Wheaton was graduated in September, 1802, at the age of seventeen, and at the Commencement Exercises pronounced "An Intermediate Oration" upon the "Progress of the Mathematical and Physical Sciences during the Eighteenth Century." This, it may be observed, was the last Commencement at which good Dr. Maxcy presided and conferred the degrees.

After three years in a Providence law-office, Wheaton went abroad, spending much time, at Poitiers, France, upon the French language and the civil law, for the study of which this provincial town offered special facilities, and in London, in further study, chiefly of Constitutional Law and Parliamentary Procedure. His letters home betray a gravity of thought, a maturity of judgment, and a keenness of observation remarkable in a youth of twenty, even though, as was remarked, "his education, as was the custom of the day, had been hastened."

In truth, Henry Wheaton, like other men of the

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first rank with exalted work to do and limit of years for its accomplishment, was denied usual adolescence but passed directly from the tenderness of childhood to the maturity of a productive manhood. These letters cast a refreshing side-light upon the upbringing of children in those far-off days, especially as to the respect they were taught to yield to their elders. Under date of July 11, 1805, when first ashore after the long voyage in a sailing vessel, filled with the joy of coming into remote touch even with home, he obviously forgets himself and begins: "My dear Father," closing with: "Your affectionate son, H. W.," but by July 15, he had so far pulled himself together as to relapse into the normal: "My dear Sir," winding up with "Assure" my mother, sisters, and brother that "I bear them always in remembrance and yourself, that I remain, your dutiful son, Henry Wheaton." To "Mr. S. Wheaton, Providence." This introduction was never varied, though the closing formula sometimes took the form of "Be assured of the respect and affection with which I remain your son" or "Accept assurances of the affectionate regard of H. W." The same somewhat formal relationship with his father is often evidenced in later letters, as: "I shall never be so well satisfied as in following your advice," "Should you wish any change in these dispositions you will of course inform me by letter, and they shall be executed as far as the circumstances of the time, when I shall receive your advice, will admit." With reference to the opinion of

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London physicians that the best safeguard against taking cold "consists in wearing flannel against the skin," he wrote: "I am prevented from adopting this counsel only by your opinion, which I remember has always been against it. You will be pleased to give me your reasons on this head, although I shall probably be obliged to determine relative to it before the receipt of them."

Foreign travel, however, bred independence rapidly in the young man; for in six months, after seeking his father's advice about a return to France and asking for the necessary funds, he could write: "Your commands I shall receive with pleasure, being quite indifferent on the subject. . . . In case the intercourse is not, however, as direct as it has been, I shall not undertake it, whatever may be your opinion." The good ship "Remittance," Captain Low, very appropriately carried this letter together with "a few trifling New-Year's-day presents" to the girls. In his last letter he writes to his father:

"You may be satisfied that I consult economy as much as is practicable, consistently with the necessity of preserving a decent and moderate conformity with the manners of the society in which I find myself."

These stilted phrases do not imply priggishness, but are forms of expression which ceased only with the Rollo literature; for when young Wheaton expressed himself on public or professional matters, he writes naturally and easily.



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At Poitiers he made good use of his time, for in addition to acquiring a respectable conversational acquaintance with the language he made a translation of the new French Code, and was only prevented from publishing it by the accidental destruction of the manuscript. At Paris he gives evidence of quickening powers of observation and growing knowledge of the world, in accounting for his difficulty in procuring quarters in a respectable private family by the fact, equally true to-day, that "those who come to Paris to spend a short time prefer to live in a hotel rather than in a private family where they must be obliged to conform to the rules there prevailing, and live in a more regular manner than most of the travellers who come to this capital wish to do."

Later in London the young student allowed nothing to interfere with his main object. In his first letter from the English capital, he writes under date of November 7, 1805: "I find I have arrived precisely at the moment of the commencement of the term of the Courts in Westminster Hall," and "What I have seen of them gives me a high idea of the administration of justice in this country. Learning, purity, and impartiality seem to preside in them," contrasting them in these particulars with the French Courts so recently studied, which he says "have not yet learned their business, or even the very laws they are to administer, besides that they are not so perfectly free from all suspicion of corruption."

Besides pursuing his legal studies, Wheaton wound

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up his stay abroad by watching the workings of the British Constitution. In the spring of 1806 he writes:

"It only remains that I shall see something more of Parliament, the practice of which as well as its substantial business you know to be of great importance. . . . In this I have not found so great facility as I could have wished, as it is difficult to gain admission into the House of Commons without paying, and as it sits only in the evening, and in a very confined, unwholesome place. The impeachment of Lord Melville, which will soon be tried, I shall certainly not neglect, as it is an affair of international importance and will call forth the abilities of the great men of the nation."

Thus were laid in a quasi-hostile land, amid the black fogs of London and the pervasive influenzas of that day, the groundwork of that exhaustive legal learning of which Great Britain through her widespread sea-power was to reap the greatest possible advantage, as well as the foundations of those marvellous diplomatic aptitudes which redounded so completely to the advantage of his own country.

Wheaton returned to Providence during 1806 and took up the practice of the law with this modest announcement, of which the rough draft is in existence: "H. Wheaton informs the Public that he has commenced the practice of his profession as an Attorney and Counsellor at Law,—office over Watson and Gladding's store."

He seems not to have acquired much of that kind

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of practice which naturally comes to the young practitioner;—perhaps there stood in his way his inability to state “the difference between a Plea in Abatement and a Special Demurrer,” somewhat compassionately noted by John Whipple, or to use as a facile instrument that system of Special Pleading still so dear to the Rhode Island lawyer. At all events, he zealously supported Jefferson and Madison in the columns of the “Rhode Island Patriot,” under which nomenclature the “Rhode Island Phoenix” had arisen from its ashes; kept in touch with foreign affairs by corresponding with Jonathan Russell; and on July 4, 1810, at the age of twenty-four delivered an oration before his fellow-townsmen, which elicited from Jefferson, *apropos* of the sentiments expressed in it,—“While these prevail all is safe.”

In 1811 Wheaton married his cousin Catherine, to whom he had been tenderly attached since boyhood, and who was the daughter of his uncle, Dr. Levi P. Wheaton, already described. It was her refined companionship, steady loyalty, and housewifely virtues which enheartened him during his waiting years of preparation, cheered him during his absence abroad, and soothed, with loving sympathy and cheerful fortitude, his closing years, when, cast down, if not embittered by disappointment and neglect at the hands of the country he had served with singular and disinterested fidelity, he came home but to die.

For seven years Wheaton toiled unremittingly.

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Only assiduous industry, coöperating with his marvellous powers, can explain the unrivalled quality and the enormous quantity of his journalistic and general literary output.

Then he went to New York and immediately rendered his first great service to the country in raising the standards of the contemporary newspaper. Prevented from engaging in legal practice by a local statute for the protection of the indigenous Bar, by which all outlanders, however distinguished in the profession, must serve a three years' novitiate, Wheaton turned to journalism and became the responsible editor of the "National Advocate," the newly established organ of the Republican party of that day in the growing metropolis. Journalism, except in a very few newspapers, had sunk to such a depth of venality and scurrility in the indulgence of personal rancor and for the advancement of partisan ends, that the Yellow Press of to-day, though thrown into strong relief by the predominating respectable Press of our time, almost shines by comparison. At the end of his first journalistic year Wheaton could say, as truly as proudly, that he had made good the engagements of his prospectus, that "this print . . . should never wound the feelings of virtue; never infringe the laws of decorum; and never spare the vices of political turpitude."

During the War of 1812 Wheaton discussed in the columns of the "Advocate," from a certain elevated standpoint ever characteristic of him, the causes of

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the war and our new rights and duties as a nation, upheld the Administration in subordinating the several States and all citizens to the supremacy of the United States in the conduct of the war and the defence of the nation, and, through his correspondence with eminent Europeans, commented intelligently upon the varying phases of foreign affairs. At the close of the war he was thanked by the Cabinet through the Attorney-General for the high public service rendered by him to the nation, and he was commissioned a Judge-Advocate in the army, receiving the unusual compliment of a unanimous confirmation by the Senate, and, although he nowhere appears to have acted in that capacity, we may be sure that he familiarized himself with the duties of that important military office from the standpoint of International Relations.

In May, 1815, at the age of thirty, Wheaton finally withdrew from journalism and was made a justice of the Marine Court of the City of New York, a court of a limited but highly important jurisdiction at that time, having to do with Commercial and Maritime causes; and for four years he rendered effective service upon that Bench.

As if there were no bounds either to his ambition or his usefulness, Wheaton also in 1815 showed his practical grasp of the country's needs by framing a national bankrupt law and in trying to secure its passage by Congress.

In 1816 Wheaton was appointed Reporter of the

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United States Supreme Court, and for eleven years continued to fill that singularly responsible position.

Honors now began to come to him thick and fast. He was evidently appreciated in his adopted State. The city of New York sent him as one of its delegates to the New York Constitutional Convention of 1821, and, among the foremost men of the State, led by Chancellor Kent and Martin Van Buren, he was prominent in advocating a general corporation law, a better maintenance of the public schools, and a permanent tenure for the judges.

Wheaton up to this time had served the public weal at the expense of his private interests,—a fact forced upon his attention by his growing family, for, in a letter to Daniel Webster, dated January 15, 1822, and among my prized possessions he writes:

“I wish it were in my power to be with you, and to assist you about the Spanish claims. But I must set off to-morrow where I shall be detained some days, and much apprehend I shall not be at Washington before the first day of court. If, however, I can be of any use in that direction, I hope you will think of me—and also in respect to business *in court*:—for it is really time for me to begin to think seriously of the ‘one thing needful.’”

Whether as the result of Webster’s assistance or not, certain it is that Wheaton began to appear frequently as counsel before the august tribunal of which he was Reporter, with such happy results among others to his reputation, if not to his bank

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account, that in 1823, upon the death of one of the Associate Justices, he was a prominent candidate for the vacancy.

The "People's party," whose object was to deflect the choice of presidential electors from the Legislature to the people, sent Wheaton to the New York Assembly, where, failing in the main object, he succeeded in killing off a presidential aspirant and so gained the favor of the new administration of John Quincy Adams and a promise of political preferment which was subsequently realized.

His last prominent work done at home was as one of the Revisors of the New York Statutes, in which he was associated with those profound lawyers John Duer and Benjamin F. Butler, the latter an honorable and high-minded lawyer, not to be confounded with a legal practitioner in Massachusetts of later date of quite another stripe. There is little doubt that the general and comprehensive plan of the entire Revision of 1829 had the benefit of Wheaton's valuable coöperation, and that he added "much to the philosophical conception and character of the work," although he was sent abroad before its completion. That the finished product did not go too far is proven by the opinion entertained by the most conservative of professions, that the Revisors had produced a work "in which all the essence of the old laws was preserved, and even the habits of lawyers were wisely respected." In his letter of resignation Wheaton, with a modesty always characteristic of him, expressed great

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regret in his enforced withdrawal from a work "in which I have labored with a zeal disproportioned to my faculties and so closely connected with the reputation and prosperity of the State of New York."

Now came the parting of the ways,—to stay at home meant certain ease in temporal matters, the sharing of professional rewards and successes, and a certain measure of local honor and usefulness; to go abroad meant large service to his country at small pay, but great friendships, perfect opportunities for study and growth, and ultimately, perhaps, the filling a unique niche in the World's greater Temple of Fame, by the side of the world's greatest benefactors.

Wheaton chose to go abroad, and in 1827 was sent by President John Quincy Adams as *Chargé d'Affaires* to Denmark to collect moneys for the wrongful seizure and condemnation of American vessels by the Danes in our late war with England. Pending a settlement, which was noteworthy both as regards the amount conceded and the precedent set up, President Jackson wisely continued Wheaton at Copenhagen, and subsequently in 1835 transferred him to Berlin, to the Court with which the United States after a long interval thus renewed diplomatic relations. Again a special mission, that of establishing better commercial relations with Germany and of compassing the removal of certain restrictions to free emigration; and again success so far as Wheaton's share in the negotiations was concerned. Presi-



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dent Van Buren in 1837 promoted him to the rank of Envoy Extraordinary and Minister Plenipotentiary to the same Court, where he continued to represent this country in a most creditable and dignified manner throughout Van Buren's administration and the succeeding administration of President Tyler. He had theretofore proved immune to the deadly bacteria of the "Spoils System" throughout four administrations; but even he had to succumb. President Polk intimated to him in 1847 that his resignation would be acceptable, not that his exalted character and meritorious services were not appreciated—far from it; it was the length of time, within which he had served his country well and above criticism, which was said to be the insuperable obstacle to his further representing that country abroad.

Upon his enforced return to this country in 1847, after twenty years of splendid service abroad, Wheaton received everywhere from the best and most thoughtful citizens, grateful evidences of regard and approval, while in this, his native city, the municipal authorities formally bade him welcome and commissioned Healey, the Sargent of that day, to paint for the city the portrait out of which Wheaton's rarely beautiful and expressive eyes with a refined and benignant glance now greet those who enter the reception room in the present City Hall. A replica of that portrait now hangs on yonder wall.

In New York on June 10, 1847, a dinner was

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tendered to him by the most distinguished citizens of every walk in life "with a view," as the invitations ran, "of manifesting their sense of his distinguished services during his diplomatic career and of the value of his contributions to the Science of International Law, and to the Literature of his country." The venerable Albert Gallatin, the Dean of American Statesmen and Diplomats, presided, but withdrew before the speechmaking began, after telling the guest of the occasion that he "would not have assisted at a public dinner given to any other man in the world." The remarks of Wheaton as he was toasted were as usual characterized by tact, modesty, and appreciativeness.

In the September following, at Commencement time, Wheaton stood for the last time in public, as he had stood forty-five years before for the first time, in the old First Baptist Meeting-house, and delivered an address before the Phi Beta Kappa Society. It was after his health began to fail him, and his voice was described as "feeble, and, as he spoke, large numbers of the audience drew near the pulpit, filling the adjacent aisles, and standing in respectful attention, that they might follow his learned discourse."

The end of this remarkable life was drawing to a close. Wheaton had accepted an appointment as Lecturer on the Civil Law and on International Law in the Law School of Harvard University, and he settled down in Providence with the intention of preparing his lectures. But as the winter wore on,

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his strength began to fail rapidly, and it was plain that he must withdraw from the lectureship. On March 11, 1848, he died at Dorchester, Massachusetts, worn out in the service of his country and of mankind. His remains were brought to Providence and buried in that charming and secluded plot of hallowed ground on the banks of the Seekonk within the limits of his native State and city; and there his bones now lie.

Henry Wheaton was a singular compound of refinement and practicality, of sentiment and sound sense; he had a tender heart and a hard head. The keynote of his soul was tenderness towards his wife and children; the keynote of his life and character was the performance of duty. He was an altruist whose unselfish instincts led him first to perform his whole duty to the nation which he loved and served, and then to his family, relatives, and friends. The list of his friends included all the celebrities on both sides of the Atlantic; on this side led by the Adamses, father and son, Jefferson, Marshall, Webster, Gallatin, Edward Everett, Washington Irving, and all the lengthening line; on the other by Metternich and Von Humboldt, down through the diminishing chain of the leaders of the Old World. The learned bodies, of which he was a recognized ornament, comprised those of both hemispheres in which membership would be esteemed especially a mark of distinction.

He lived apparently with a pen in his hand. Let-

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ters, family and official, newspaper articles, essays, reviews, occasional addresses, monographs, court reports, historical works, and legal treatises marked at once his literary productivity, and gauged his increasing value to the world.

From the beginning his style was as clear as his thinking was straight, as chaste as his soul was pure, and as pointed as his mind was practical. As Wheaton himself said of Dallas: "His style both in speaking and writing was chaste and perspicuous; seldom embellished with rhetorical ornament, but always marked with good taste." If you are obliged to read a sentence of Wheaton a second time, there is something the matter with you. In recognition of his literary claims, Brown University as early as 1819 conferred upon Wheaton the degree of LL.D.; while the same honor from Hamilton College in 1843, with a like recognition from Harvard University in 1845, marked the increasing approbation of the academic world.

Aside from his professional and official duties, Wheaton was interested in everything that made for progress in the world, the growth of the fine arts, the development of science, and the consequent happiness of mankind. His literary essays covered such diverse subjects as the State of Modern Art as regards architecture, painting, and sculpture; the Physical Geography of Humboldt, the Writings of Diderot, and the Geography of Afghanistan.

Throughout his life Mr. Wheaton was a man of

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Christian principle; of a simple and persistent faith; he carried his religion with him abroad and sought everywhere to promote the interests of that religion; and he died as he had lived a consistent Christian man.

I cannot close this imperfect sketch of the personal side of his career better than by quoting Charles Sumner's description of Wheaton written soon after the latter's death: "From youth to age his career was marked by integrity, temperance, frugality, modesty, industry. His quiet, unostentatious manners were fit companions of his virtues. . . . Nor station nor fame made him proud. He stood with serene simplicity in the presence of kings. In the social circle, when he spoke, all drew near to listen, —sure that what he said would be wise, tolerant, and kind."

Henry Wheaton was eminent in four great public channels of human activity,—in one, and that the most exceptional, he was preëminent.

The United States Supreme Court is the most august tribunal upon the face of the earth. De Tocqueville said that it stands "at the head of all known tribunals, both by the nature of its rights and the class of justiciable parties which it controls"; "the peace, the prosperity, and the very existence of the Union, are invested in the hands" of its nine Justices. It is not only a constituent part of the triple arch which sustains the framework of our Government, but it became under the Constitution—in

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the language of another great son of Brown, like Webster, at once an incomparable Secretary of State and a leader of the American Bar (I refer to Richard Olney)—the “keystone of the arch supporting the new political edifice and was invested with the most absolute and far-reaching authority.” Marshall, the incomparable Chief Justice, had directed the deliberations of this great court since 1801, delivering opinions on International Law, described as ranking “with the best there are in the books,” while in the field of Constitutional Law, especially in that department relating to the National Constitution, “he was preëminent—first, with no one second.” Of this exalted court and of this unrivalled Chief Justice, Wheaton became, at the age of twenty-nine, the intimate and confidential friend, the trusted and indefatigable co-worker.

I take it that the office and functions of a Reporter of Decisions of a court of last resort, in the United States and in England and her dependencies, to which they are peculiar, are hardly known to the intelligent public outside the legal profession. For that profession they perform high and essential duties, and through it for the entire community. The decrees of an appellate court when handed down from the Bench, not only determine the rights of the parties in the particular cause, but become precedents for the decision of future cases of a similar character. The special duty of a Reporter is to embody and publish the judgments of his court in enduring literary

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form, with technical correctness and absolute clearness, and as much distinction and individuality of style as he is capable of. The office is as dignified as it is important, and may be said to rank with the Bench in professional, if not in popular, estimation; for many judges have first been reporters, and many more owe their reputations to their reporters; many reporters have been raised to the Bench; and more reporters relatively, perhaps, than judges have attained lasting fame in the profession, for while there are many judges there are few reporters.

In the days of the Fathers especially, the United States Supreme Court was called upon to decide questions involving momentous political results as well as questions of the most serious legal character, and it was fortunate, alike for the profession and for the country, that a lawyer of Wheaton's calibre was made its third Reporter.

A Reporter may incline to one of two methods. He may sink to the position of being the mere clerk of the court and the mere editor of its decisions, in a word, nothing but the mouthpiece of the judges; or he may be the wise commentator and judicious interpreter of their decisions, which, but for him, might in too many instances go forth to the profession obscure in meaning, slovenly in style, narrow for purposes of future application, and dubious as precedents. It is needless to say that Wheaton belonged to the latter class and laid the Bench and Bar under lasting obligations, not only by reporting the deci-

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sions of the Justices fully and accurately but by explaining and amplifying the positions taken by the court, in copious notes, full of wide and accurate learning, especially in the civil law, a knowledge of which was, at the time, as unusual as it was valuable.

From 1816 to 1827 Wheaton made and published twelve volumes of reports, which cover adjudicated cases relating to every branch of the law, involving the decision of questions arising from the conflict of private, Federal, and International relations, the whole forming a series, which a German reviewer called "The Golden Book of American Law."

Out of his connection with the reportership came Wheaton's first great disappointment. He had accepted a foreign mission at an inadequate salary, confidently relying upon the income from the continued sale of his reports to supplement his salary and provide for the future of his family. Mr. Peters, his successor as Reporter, prepared and published an abridged edition of Wheaton's Reports, the publication of which Wheaton sought to prevent by legal proceedings. A letter written by him on January 18, 1884, at once shows his cordial relations with the legal profession and his own righteous indignation at the treatment he had received:

"I have seen my judges. The old Chief Justice received me with fraternal frankness. What a green old age! I have also had the pleasure of meeting many old friends of the Bar with cordial greeting. They are one and all against Peters, crying out that



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his conduct has been shameful. But he bears it off with brazen impudence. . . . I don't envy him his feelings."

But courts are uninfluenced by the "feelings" of the Bar, or, knowingly, by their private sentiments or by their personal liking for a litigant. The decision of the Supreme Court was against its former Reporter, and, in denying him an exclusive copyright in essential parts of his reports which after all are but public records, laid down law undoubtedly sound; but as depriving Wheaton of the fruits of twelve years of close and unremitting labor, the judgment was a severe and bitter blow.

When the first volume of Wheaton's Reports appeared, it received the unusual compliment of a review by Daniel Webster, who expressed his "high opinion of the general manner in which the Reporter has executed his duty in the volume before us. Mr. Wheaton," he continues, "has not only recorded the decisions with accuracy, but has greatly added to the value of the volume by the extent and excellence of his notes. In this particular, his merits are in a great degree peculiar. No Reporter in modern times, as far as we know, has inserted so much and so valuable matter of his own."

Mr. Justice Story, in acknowledging the receipt of the same volume, wrote: "I am exceedingly pleased with the execution of the work. The arguments are reported with brevity, force, and accuracy; and the notes have all your clear, discriminating, and pointed

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learning. . . . In my judgment your reports are the very best in manner that have ever been published in our country, and I should be surprised if the whole profession do not pay you this voluntary homage."

With such encomiums from such high and competent sources, the reputation of the author of *Wheaton's Reports* may be said to be secure.

As the archetype of the brilliant line of literary and scholarly diplomatists since sent abroad by the United States, among whom stands forth no more brilliant array of names than that of those representing "Brown" training and "Brown" traditions, in the persons of John Meredith Read, Samuel Sullivan Cox, James B. Angell, and John Hay,—as the precursor of these, I say, Wheaton emphasized the best traditions of American diplomacy as established by Franklin, our earliest and confessedly our greatest diplomat. He possessed in a high degree the two most essential qualifications of a diplomatist,—the rarest tact and the keenest insight; his tact placed him in pleasant, even intimate, relations with the diplomatic world from the sovereign to the humblest *Chargé d'Affaires*; his intuitive perspicacity enabled him to draw correct conclusions, or to anticipate results, in season to check the trend of affairs, if adverse, or to promote it, if favorable, to his country's interests. He was a born diplomat, as evidenced by a letter to his father from London early in 1806:

"I have endeavored to follow your advice as to shunning political dissensions, avoiding conversa-

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tion of that nature when practicable, and silently assenting to the ideas when not. This, however, is not so easy to do,—almost every important subject of inquiry being more or less connected with politics in the awful times when we live.”

For those early days, he possessed practical qualifications for a diplomatic career, as uncommon as they were unusual: first, his ability to speak and read the French language and his familiarity with its literature, begun during his early trip abroad and incessantly cultivated through study and correspondence with many eminent foreigners, marvellously soon to be matched by a like knowledge of the Danish and the German; and, secondly,—what was even rarer and more novel,—a close knowledge of the immortal code of the Roman law, the *sine qua non* of an accomplished diplomat.

The present Secretary of State, already mentioned as representing Brown University abroad with distinguished success, in speaking recently of American diplomacy, said: “The briefest expression of our rule of conduct is, perhaps, the Monroe Doctrine and the Golden Rule; with this simple chart we can hardly go far wrong.” This was everywhere hailed as a new pronouncement, although the distinguished speaker hastened to add: “And it has been approved by the experience of one hundred years.”

Wheaton, speaking at the New York dinner in 1847, said: “The office of a foreign minister is the office of a peacemaker. Diplomacy has been supposed

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to be a mantle of craft and deceit, but I believe that honor and integrity are the true arts of the diplomatist."

That experienced and astute diplomat, Charles Francis Adams, the elder, in speaking of the traditional diplomacy, said:

"There are three sorts of diplomatic composition, which are habitually resorted to in meeting particular necessities: The first is, when hostility is intended. The language is then courteous, but short, every word covering intelligible offence. The second, when dissatisfaction is to be expressed, but no action to follow. Then the notes are apt to be long and full of argument, with abundant citation of authorities, yet terminating with nothing but assurances of the highest consideration, *et cetera*. The third and last is resorted to when a sincere desire for harmony prevails. Then the phrases are less studied and the intent more directly signified—the whole sense conveyed in brief notes."

But in whatever form of composition, Wheaton, true to the then inchoate school of American diplomacy, showed candor, simple truth, straightforwardness, reliance on the justice of his cause; and a desire for fair dealing shone through every sentence and was reflected from every line.

The particular work assigned Wheaton at Copenhagen, that of exacting indemnity for spoliation of our commerce, he executed with thoroughness and comparative despatch, and later at Berlin he accom-

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plished the removal of certain obstacles to free emigration thence to our shores, and negotiated most satisfactory commercial treaties,—it was no fault of his that our Senate for political effect in the States refused to confirm them. Further, he rendered international services in respect of the extradition of fugitives from justice; in curbing the pretensions of Great Britain to search American vessels in time of peace; and in securing recognition of the prerogatives of foreign ministers and their immunity from local jurisdiction.

Of European matters touching the United States, outside his own legation he was an attentive and experienced observer, and his suggestions to his colleagues and to the Department of State were at all times as welcome as they were valuable; while he lost no opportunity of creating a sound public opinion everywhere abroad respecting the political course of the United States. In one of his letters he writes:

“A great deal of my time and attention is occupied in refuting the misrepresentations of our national character and conduct. . . . I hold it to be the duty of a public minister to take care of the honor of his country abroad.”

Nothing that would affect favorably the honor, the interests, and the material prosperity of the United States in her world relations, was left undone by Wheaton during his stay in Europe. He even elaborated a plan for a waterway from the North Sea across Germany to the Adriatic and the Mediterranean,

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forming, with a canal through the Isthmus of Suez, a route between Europe and the East Indies, as well as a second route from Europe and the United States to the Orient through the Isthmus of Panama, both these sea routes to be put under the common guarantee of all the maritime powers as a part of the great thoroughfare of Nations. It is "a great and fine conception of yours, that of opening up a route from the north by way of Trieste to the Levant and into India. The world owes it to you," writes his friend, Alexander von Humboldt, in 1846.

For upwards of twenty years Wheaton continued to receive, as already noted, the most flattering assurances from successive administrations of the high estimation in which his services were held; yet when his capacity for usefulness was at its highest mark, instead of being transferred to Paris or to London, as the whole diplomatic world confidently anticipated,—positions for which his experience, his acquirements, and his intimate knowledge of the great world preeminently fitted him,—he was recalled. This was the second great and bitter disappointment of Wheaton's life. The foreign press, the diplomatic world, his circle of friends, were filled with surprise—nay, with consternation—at the seeming shortsightedness of our Government. Alexander von Humboldt wrote: "The King grieves over your departure. He knows how useful you have been, and he does not understand how a government can deprive itself of such a stay," and again Humboldt says: "I cannot yet

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believe that your country will allow you to leave Europe,—that it will deprive itself of such a statesman as you."

Let me advert to one other expert opinion of the value of Wheaton's services abroad during a perplexing period of our country's history. These services were rendered long before the American Invasion of Europe, before the writings of Captain Mahan laid the foundation for a better understanding with Great Britain, and before the coinage and the effect of the word "Imperialism" after recent events, had made the task of our representatives abroad a comparatively easy one. I quote from a recent letter of President Angell, accomplished educator, diplomatist, and loyal son of Brown:

"His vision swept over the whole political field of Europe and his observations were of constant service to our Department of State. One cannot but regret that no adequate opportunity was furnished him for the highest work to do which as a diplomatist he was fully competent." "He was constantly studying important questions affecting our interests with foreign nations and by the publication of articles and pamphlets and communications to learned societies was in effect preparing the way for our diplomatic successes which he was not permitted to win directly."

Of Wheaton the diplomat, it may truly be said that he possessed in high degree all those capacities for high public service amid alien surroundings that Alberico Gentili, publicist and man of the world,

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imputed to Sir Philip Sydney, his friend and patron, in dedicating to him his learned treatise, "*De Legationibus*." Gentili, in describing the qualifications necessary in his opinion to make up an ideal ambassador, wrote that: besides the gifts of natural genius and peculiar aptitudes for this vocation, there were requisite eloquence, an extensive knowledge of history and political philosophy, dignity of manners and high courtly breeding, temperance, fortitude, prudence, and a sacred regard for truth and rectitude,—in short, all those attainments, qualities, and virtues which were to be found in Sir Philip Sydney himself.

Henry Wheaton enjoyed the unique distinction of being at once the expounder of the science of International Law and its earliest historian. Upon his nomination by De Tocqueville, Berenger, and Rossi, for membership in the French Institute the members of that famous body hesitated, in complimentary mood, whether to assign him to the section of History or that of Jurisprudence. Upon his subsequent flattering election, he was assigned to the division of Jurisprudence, but it is difficult to find a reason, beyond that of graceful compliment, for the indecision of the Institute. He was eminent, it is true, as an historian, but it was as the historian of the Law of Nations that he was famous. His miscellaneous historical writings ever trenched upon the domain of International Law or of Public Law. Even his life of the distinguished American lawyer and statesman, William Pinkney, scarcely touched upon the details



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of the personal career of that famous leader of the Bar save as they bore upon the affairs of State or the negotiations of treaties.

Upon his first arrival in Copenhagen, Wheaton threw himself with such characteristic zeal into the study of the language, the history, the laws, and the institutions of the countries of the North that within a year he had written, *inter alia*, an article in Danish on the Public Laws of Denmark, which led to his election to membership in the Scandinavian Society and in the Icelandic Literary Society. Following this by the brief interval of a year came the "History of the Northmen," upon which Wheaton's fame as an historian chiefly rests. This work received appreciative and sympathetic treatment in a review by Washington Irving. After further research and investigation, this historical work was published in 1844, as a new edition in the French, in which the author committed himself definitely to the pre-Columbian discovery of America by the Northmen.

The reviewer of this edition in the "Revue Étrangère et Française" affords, in his appreciative article, further ground for the statement that as applied to Henry Wheaton, the terms historian and jurist were practically interchangeable.

"Mr. Wheaton," writes M. de la Nourais, "is not only a historian, but in his Scandinavian researches he did not lose sight of the main avocation of his life, public law. It is as a publicist that he has investigated, interpreted, and almost always with rare sa-

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gacity, the ancient monuments of the Scandinavian law;—at the side of historical events he has known how to place the legislation of the people whose annals he recounts. It is principally from this point of view that we consider the work of Mr. Wheaton within the scope of our labors. He makes known the laws and judicial customs of the people of whom he has rendered himself the historian.”

The transition is easy and natural to the crowning distinction of Wheaton's great career,—that of being at once the foremost writer in the realm of International Law as well as its historian, a dual distinction that differentiates him from all other Americans, as completely as Washington, Hamilton, Marshall, Webster, and Lincoln were distinguished from all others each in the sphere of his supremacy.

Chief Justice Marshall once wrote to Wheaton: “Old Hugo Grotius is indebted to you for your defence of him and his quotations. You have raised him in my estimation to the rank he deserves.” I will make the attempt at least to raise our illustrious fellow-alumnus and fellow-countryman to the rank in your estimation that he also deserves.

With rare insight into his own powers and destiny and with a singular appreciation of that branch of legal learning, in pursuing which he could be most useful to his own countrymen and to mankind, from his earliest legal studies, Wheaton devoted himself to International Law. The science of International

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Law was in the nature of things more progressive than that of any other department of jurisprudence or legislation, and in his day had come to demand new and fresh treatment. All of Wheaton's early training, all his after-study of the conditions of European politics,—in a word, all his legal, journalistic, historical, and diplomatic experience led by easy and natural steps to the accomplishment of this professional and humanitarian purpose.

Adequately to estimate the value of Wheaton's services to mankind in this noble pursuit, a brief glance at earlier conditions and the work of his predecessors may prove illuminating.

There were the first faint glimmerings of inter-tribal or inter-state understanding among the Greeks, increasing to half-lights under the Romans with the coming of Christianity and the laying down of the Golden Rule by the Great Head of the Church; dawn came only, after the obscurity of the Middle Ages, with the birth and work of Hugo de Groot, commonly called Grotius; but clear daylight flooded the nations of the earth as with a new dispensation of brotherhood only with the advent of Wheaton and his workable message. Grotius, the founder, and Wheaton, the expounder, then, stand out as the two great names in International Law; all others were disciples or commentators of the one, or have been editors and followers of the other.

After the Holy Roman Empire, like its greater namesake, ceased to be, and the Peace of West-

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phalia in 1648, which is conceded to mark the beginning of Modern International Law, was made, creating in Middle Europe a horde of petty but practically independent States, a new force to protect, conserve, and regulate the intercourse of sovereign States became necessary. What Sir James Stephen so eloquently said of religion and the Reformation movement may truly be affirmed of International Law. "The jurists set to music the tune which was haunting millions of ears. It was caught up, here and there, and repeated till the chorus was thundered out by a body of singers able to drown all discords and to force the vast unmusical mass to listen to them." The time was ripe and the force appeared; and as always in the evolution of human affairs the man, gifted with the power to exert wisely and effectively the force needed, was at hand. Grotius came and did his work, and Modern International Law dates as a distinct branch of scientific study from his labors. His life marked the wide parting of the ways between ancient cruelty and callousness to pain and suffering, and the modern tendencies towards charity, pity, and universal brotherhood. "I saw," said he, "throughout the Christian world a license of warring at which barbarians might blush; wars commenced on trifling pretexts, or none at all, and prosecuted without reverence for any law, human or divine, as if that one declaration of war let loose every crime."

Grotius and his learned successors, Pufendorf,

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Vattel, and many others, valuable as their labors proved, were theorists, urging schemes for the conduct of ideal States and ideal relations between them. Their writings were incitements to better practices, but failed to set forth the practical details of the new science, and to make particular application of the general doctrines which they laid down with so much power and fulness. This defect called loudly for a new, practical, and authoritative exposition and classification of the Law of Nations with adequate illustration, effective instances, and practical precedents. How imperative was the demand for this new pronouncement may be judged from the observation of the American missionary who translated Wheaton's great work into the Chinese language in 1864, as an official guide for the Chinese Empire, "as an undertaking not unsuitable for a missionary who feels in duty bound to seek the welfare of the country he has chosen for the seat of his labors." In the remarkable preface to this edition, Dr. Martin, after stating that International Law in its present form is the "mature fruit of Christian civilization," says: "For the choice of my author I offer no apology. My mind at first inclined to Vattel; but on reflection, it appeared to me, that the work of that excellent and lucid writer might as a practical guide be somewhat out of date; and that to introduce it to the Chinese would not be unlike teaching them the Ptolemaic system of the heavens. Mr. Wheaton's book, besides the advantage of bringing the science

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down to a very recent day, is generally recognized as a full and impartial digest; and as such has found its way into all the Cabinets of Europe." And yet this same Vattel preceded Wheaton by half a century only!

This self-imposed task of Wheaton was no less imperative, though rendered perhaps the easier, because of the improvement in the international feeling, policy, and intercourse of Europe; of the thrusting of the United States into the family of nations; of the progress of civilization in general; of the growth of colonization and commerce, resulting through self-interest in a greater respect for neutral rights; of the abolition of the African slave-trade; of the spread of the sound and salutary doctrines of political economy; and of the amelioration of the horrors of war confining them within the narrowest limits compatible with the objects to be accomplished. The practical details necessary to a full and masterly revision of the accepted code, necessary to place it abreast of the times and admit of its easy and natural development, were to be sought for in the history of diplomatic intercourse, in the decisions of the tribunals by which the Law of Nations is administered, and in the ordinances of particular States, reducing that law to a written text for the direction of such tribunals and for the information of foreign powers. Wheaton alone had the practical as well as the theoretical learning for the supreme task; he alone possessed the intimate and varied knowledge

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of potentates and powers, of statesmen and philosophers, of cabinets and legislatures; he alone combined in his own person the prophetic qualities of a seer and the practical sagacity of the "man in the street." What a vision and trained imagination he must have had to see so far beyond the horizon of his time and environment!

Wheaton's trip abroad and his attendance on the English Courts bore earliest fruit at the age of thirty by the publication in 1815 of his "Digest of the Law of Maritime Captures or Prize," so thorough, so practical, and so complete that, save as developed by later decisions, it remains the standard treatise on that subject to-day. Of it Judge Story wrote: "You have honorably discharged that duty which every man owes to his profession; and I am persuaded that your labors will ultimately obtain the rewards which your learning and talents cannot fail to secure."

In 1820 he pronounced before the New York Historical Society the anniversary address on "The Science of Public and International Law," the first-fruits of his studies on this subject, of which the venerable John Adams said: "It is the production of great reading, profound reflection, a discriminating mind, and a pure taste. . . . Had I read such a discourse sixty-five years ago, it would have given a different and more respectable cast to my whole life."

When just past the half-century mark, in the full maturity of his powers, ripe in learning, no less ripe in experience, a shrewd man of affairs as sapient as sa-

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gacious, scholar and statesman, he first as an American, proud of his English lineage, published in 1836 in his mother tongue at London his "Elements of International Law," and again at Philadelphia in 1844. Later, cosmopolite as he was, he re-issued this great work in French,—the universal language of diplomacy, a language scarcely less familiar to him than his own,—first at Leipsic in 1848, and later at Paris in 1852 and 1858.

This epochal work, since published and re-published in many languages, in every department practical as well as philosophical, not attempting solely the impracticable task of formulating an ideal Law of Nations independent of custom and usage, but ever defining and delimiting that law as recognized by the Great Powers, met with instant recognition as the guide for America and was adopted as an authority in all the Chancelleries of Europe.

Competent and impartial critics and rival authors of England united in stamping this production of an American as not only "indisputably the best of the kind in the English language: but as the most useful book on the subject extant."

Edward Everett, scholar, orator, diplomat, said in reviewing a later edition: "We scarcely know another instance of a reputation as solid and so generally admitted which has been as promptly built up as Mr. Wheaton's in a great department of moral science. When it is considered how much of that professional intellect of the nineteenth century has



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been employed, at the Bar and on the Bench, in defining the rules of the Public Law; what vast interests, public and private, have been affected by the application of those rules during the wars of the French Revolution, and how many have undertaken as text-writers to discuss the principles on which questions affecting those interests have been adjudicated by the tribunals, it may well be deemed a rare distinction for our honored countryman to have won for himself the reputation of the leading elementary writer in this department,—at once the earliest and the ablest commentator on the Law of Nations in the English language.” But this fountain of learning and wisdom had only begun to flow for the “healing of the nations.”

There followed from Wheaton’s pen at New York in 1845, as a natural sequence and companion volume to the “Elements,” the unique and original “History of the Law of Nations,” the amplification of an earlier essay in French, “the first book of its kind in any language,” and submitted in the preface by the learned author “to the judgment of his countrymen, as a contribution to the history of this branch of science, in the hope that it may be of some use in guiding the inquiries of others in a field of knowledge so important to the jurist, the statesman, and the philanthropist.”

A chorus of cosmopolitan approval met this last and crowning work of our countryman.

A Portuguese publicist, the editor of Vattel and

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Martens, admired "the vast erudition of the author, showing that nothing which had been done and written that was remarkable, was unknown to him." A Scotchman declared that few men were better fitted to write a History of the Law of Nations than Mr. Wheaton—"a lawyer, historian, and a statesman he unites poetical and theoretical knowledge"; while a German philosopher hastened to add that, "Every student of this important science is bound to acknowledge his deep gratitude to the learned author, who, uniting the accomplishments of a public jurist and of a practical diplomat of the School of Franklin and Jefferson, to those of a scholar already known by his other literary works, has furnished the best commentary on his own 'Elements of International Law.'"

If this summing-up of the exceptional standing and high accomplishment of Henry Wheaton in the lofty field of International Jurisprudence seems to savor of partiality and extravagance, one more witness will be summoned to the bar of last resort,—public opinion. In the eulogy of the "London Times" upon the death of the savant and philosopher whose work reflected credit and glory upon all English-speaking peoples, appeared these words: "We cannot mention the name of Henry Wheaton without a passing tribute to the character, the learning, and the virtues of a man, who, as a great International Lawyer, leaves not his like behind."

The supreme qualities, moral and intellectual, the

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high services to his native land and the world as a whole, and the neglect and ingratitude which he received at the hands of the Republic he served so successfully and so devotedly, cannot be better described than by paraphrasing the language of Wheaton himself in speaking of the immortal Grotius—language incidentally affording an example of his pure, solid, and lucid style:

The condition of affairs between the so-called Christian Nations at the end of the eighteenth century “called loudly for a great teacher and reformer to arise. . . . Such a teacher and reformer” was Henry . Wheaton, who was born in the latter part of that century and flourished in the beginning of the nineteenth. “That age was peculiarly fruitful in great men, but produced no one more remarkable for genius and for variety of talents and knowledge, or for the important influence his labors exercised upon the subsequent opinions and conduct of mankind. Almost equally distinguished as a scholar and a man of affairs, he was at the same time an eloquent advocate, a scientific lawyer, a classical historian, and a patriotic statesman. His was one of the powerful minds which have paid the tribute of their assent to the truth of Christianity. He vindicated anew the freedom of the seas, as the common property of all nations, against the extravagant pretension of Great Britain” and other European nations. His ungrateful country, upon a change of administration, in obedience to that pagan maxim, soon, it is to be hoped, to

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be set aside in the diplomatic and consular service, as in other departments of our government,—“To the Victors belong the Spoils,”—“rewarded his virtues” by recalling him from a post of duty where he had rendered exceptional service and conferred only honor upon his native land, instead of promoting him to a still more influential post of duty, thus doing an act of injustice which probably contributed, through disappointment and the change wrought in mental habit and high expectation, to his untimely death.

Wheaton's fame as the leading authority on the subject of International Law, on either side of the Atlantic, rests secure; the select jury of his peers have registered their verdict, and there is no tribunal capable of setting it aside. His more exalted fame as a propagandist of doctrines that make for the peace of the world rests upon even solidier foundations. Wrote Secretary, afterwards President, Buchanan to those in charge of the New York dinner already mentioned:

“Mr. Wheaton richly merits this token of your regard. He has done honor to his country abroad, and deserves to be honored by his countrymen at home. . . . While we hail with enthusiasm the victorious general engaged in fighting the battles of his country, our gratitude is due to the learned civilian, who, by clearly expounding the rights and duties of nations, contributes to preserve the peace of the world.”

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Wheaton's aspiration, proceeding naturally from the *media* of his waking toil, like the hope cherished by many dreamers from the earliest dawn of civilization, was the establishment of perpetual peace in the world by the settlement of disputes among the nations through a great Amphictyonic Council of Arbitration, whose decrees should find enforcement in an irresistible public opinion. Far be it from me to claim for Wheaton the application, any more than the invention, of a resort to peaceable arbitration, or to ignore the claims to honor of other publicists and of other writers upon the same high themes; but I do contend that the most potent force, acting upon the hidden springs of high Statecraft and shaping the veiled action of exalted public functionaries towards the securing of peace by peaceable measures, in the last half of the nineteenth century and thus far in the twentieth, has been the irresistible equity of the Law of Nations as published to the world by our peerless fellow-countryman.

It is this phase of his life-work in its larger and broader aspects, enforcing the doctrines of justice and peace, restricting the bitterness of war and gradually creating a more enlightened and humane public feeling, which, at last, filtering through the brains of bureaucratic councillors and chancellors into the hearts and consciences of kings and rulers, has resulted already in the Hague Conference and the ever-widening atmosphere of arbitration,—it is, I say, this influence, emanating from the great work

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and serene soul of Wheaton, which has done so much to convert this dream of his into a blessed promise of reality, that constitutes his unique and indisputable claim to the eternal gratitude of our race.

Some faithless ones—comprising perhaps the majority of enlightened persons—might until recently have agreed with Mr. Bryce that the difficulty of erecting such a universal and far-reaching tribunal to arbitrate and decide among puissant nations, with a police power effective enough to enforce its awards, is as far from solution as ever.

The late Lord Chief Justice of England, friend of peace and believer in arbitration, as he described himself to be, so recently as 1896, in addressing the American Bar Association, was inclined to doubt whether a Tribunal of Arbitration could be erected to which the Great Powers would be willing to refer each and every question of dispute that might arise among them, as, for instance, “delicate questions affecting national honor and sentiment”; but even these he thought, after being circumscribed through the friendly offices of a mediator, the mutual friend of both parties, might then be finally settled by a reference to some form of organized arbitration.

But Intervention and Mediation are but sub-titles of Arbitration, and it is immaterial whether the tribunal erected to register the enlightened will of the nations be a permanent or a shifting one so long as in the end peace is assured. And he must indeed be faithless or a dull observer of the trend of modern

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civilization who does not discover, in the present almost morbid revulsion from the horrors of war, even when conducted strictly within the milder rules of so-called civilized warfare, and in the widespread restlessness under enforced military service abroad and under the burden of taxation everywhere for the enormous expenditures of war, effective tendencies making for the preservation of lasting peace, who does not believe that the utilitarian temper of the age—even if the spirit of a loftier civilization and of a purer Christianity were not tending to the same result—will soon insist upon some form of arbitration as a substitute for the brute force called war. The fashion introduced by the two great English-speaking nations of themselves paying an indemnity to the conquered instead of exacting financial reparations in part payment of the cost of war, humane and praiseworthy though it be, may perhaps prove to be the last straw to crush the over-burdened and sensitive tax-payer.

If the Millennium of Peace is not reached at once, if the hopes raised by the recent rapid march of events are dashed to the ground and seemingly well-grounded expectation meets with temporary rebuffs, let us remember the dual motto of Wheaton and take courage, *Μηδὲν ἄγαν*; *Perseverando*. Don't expect too much but keep at it.

Here then lies the debt under which all mankind rests to the memory of this sincere, gifted, single-hearted, pure-spirited, Christian gentleman. He was

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no amateur theorizer upon what should be the bases for concert of action between the nations; he laid down the practical rules of action themselves in accordance with the highest theoretical standards—rules which the hard-headed, iron-hearted chancellors and premiers of all countries, nations, and tongues have been content to accept, to follow, and to enlarge; but he at the same time, following the example of the immortal Grotius, reiterated the everlasting principles of eternal justice and laid down the ideal conditions that should exist between increasingly enlightened States in the following and development of which everlasting peace should come. He was a great son of Brown; he was a great child of Rhode Island; he was a great citizen of the world.

Brown University will henceforth cherish the memory of this her greatest son and seek to deepen his beneficent influence, not only by occasional celebrations upon infrequent anniversaries, but constantly by coöperating with all other institutions of learning and with all good agencies, in striving to create a sound and insistent public opinion for the adoption and enforcement of some form of universal arbitration which will insure that for which he toiled, of which he dreamed,—the peace of the world.

This, his native State, should, by some unmistakable token once and for all time, declare its appreciation of one whose fame sheds such lustre upon the State of his nativity. Here he was born; here



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his ashes mingle with the soil; and though the world was his workshop, this corner of the Union gave him to the world and to it his thought ever reverted. Frequently in his letters he alludes to Rhode Island as "My Dear Native Commonwealth," with further expressions of interest showing intimate knowledge with the internal affairs of the State and the keenest sympathy in its growth and progress. Upon the slope of the hillside across the valley stands forth that newly created dream in marble, fit abode for the government of a powerful State, filling the eye with its majestic proportions, satisfying the artistic sense in every graceful and noble outline, radiant in its perennial beauty. In the great rotunda beneath that noble dome, which crowns with matchless dignity the noble pile, should stand, fitly clothed in marble by a St. Gaudens or a MacMonnies, serene, spiritual, compelling at once respect and admiration, an embodiment of this unapproachable son of Rhode Island, testimony at once of affection and ownership in a gifted son.

Thus, at last, this Commonwealth, most densely populated of all the States, great in wealth, great in the useful arts, seat of this Venerable Institution of Learning, with a heroic past and a prosperous future, would glorify her motherhood of this exceptional benefactor of humanity, this promoter of peace and good-will among men, this honorable American Gentleman and Statesman, — Henry Wheaton.

1. The first part of the document is a list of the names of the persons who have been appointed to the various offices of the city of New York.

2. The second part of the document is a list of the names of the persons who have been appointed to the various offices of the city of New York.

3. The third part of the document is a list of the names of the persons who have been appointed to the various offices of the city of New York.

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10. The tenth part of the document is a list of the names of the persons who have been appointed to the various offices of the city of New York.

